

APPENDIX C

CONCISE EXPLANATORY STATEMENT

A. CHANGES IN THE TEXT OF THE PROPOSED RULES FROM THAT CONTAINED IN DECISION NO. 61272 (PUBLISHED ON JANUARY 22, 1999, VOL. 5, ISSUE 4 OF THE ARIZONA ADMINISTRATIVE REGISTER).

The following sections have been modified as indicated in the text of the rules set forth in Appendix A hereto, and incorporated herein by reference:

Article 2. Electric Utilities

R14-2-201 Definitions

R14-2-202 Certificate of Convenience and Necessity for electric utilities; filing requirements on certain new plants

R14-2-204 Minimum customer information requirements

R14-2-210 Billing and collection

R14-2-211 Termination of service

Article 16. Retail Electric Competition

R14-2-1601 Definitions

R14-2-1602 Filing of Tariffs by Affected Utilities – replaced by Commencement of Competition

R14-2-1603. Certificates of Convenience and Necessity

R14-2-1604. Competitive Phases

R14-2-1605. Competitive Services

R14-2-1606. Services Required To Be Made Available

R14-2-1607. Recovery of Stranded Cost of Affected Utilities

R14-2-1608. System Benefits Charges

R14-2-1609. Solar Portfolio Standard

R14-2-1610. Transmission and Distribution Access

R14-2-1612. Rates

- R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
- R14-2-1614. Reporting Requirements
- R14-2-1615. Administrative Requirements
- R14-2-1616. Separation of Monopoly and Competitive Services
- R14-2-1617. Affiliate Transactions
- R14-2-1618. Disclosure of Information

B. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULES

R14-2-1601 – Definitions

Issue: The City of Tucson (“Tucson”) recommended adding a new definition for the term “customer”. Tucson did not elaborate on the need for such addition.

Evaluation: The rules are clear without the proposed new definition.

Resolution: No change required.

1601(4)- Buy Through

Issue: Arizona Public Service (“APS”) and Tucson Electric Power (“TEP”) recommended deleting the definition of “Buy-Through”. New Energy Ventures Southwest, LLC (“NEV”) argued that Buy-Throughs should not be allowed because they allow Utility Distribution Companies (“UDCs”) to compete in the competitive market and they are unnecessary because the rules (1604(F)) already permit customers under contract to access the competitive market.

Evaluation: We concur with APS, TEP and NEV. The rules have been clarified to provide that after January 1, 2001, Affected Utilities and UDCs may not provide Competitive Services. To permit buy-throughs prior to January 1, 2001 appears to be a method to avoid the 20% cap during transition to full competition.

Resolution: Delete subsection (4), and renumber accordingly.

1601(5) – Competitive Transition Charge (CTC)

Issue: Mohave Electric Cooperative, Inc. and Navopache Electric Cooperative, Inc.

(collectively “Mohave and Navopache”) recommended adding language to the definition of Competitive Transition Charge (“CTC”) that would allow the recovery of costs incurred by the Affected Utilities to implement the competition rules. The Residential Utility Consumer Office (“RUCO”) proposed changing the definition of CTC to be recovered from all customers.

Evaluation: The CTC should be collected from all customers, whether in Standard Offer rates or from customers taking competitive services. The CTC charge to Standard Offer customers should not be an additional charge, but the portion of customers’ Standard Offer bills that is going toward Stranded Costs should be identified on Standard Offer bills as required by R14-2-1613(O). Mohave and Navopache’s concerns are addressed in R14-2-1607 concerning the determination of the CTC.

Resolution: Delete the words “from the customers of competitive service.”

1601(6) – Competitive Services

Issue: Trico Electric Cooperative, Inc. (“Trico”) recommended the following definition for competitive services: “the retail sale of electricity obtained from the generation of electricity from generators at any location whether owned by the provider of Competitive Services or purchased from another generator or wholesaler of electric generation except Standard Offer service.”

Evaluation: Trico’s proposed definition is not sufficiently comprehensive.

Resolution: No change is required.

1601(8) - Consumer Information

Issue: RUCO proposed that the definition of “Consumer Information” be renamed “Consumer Education.” RUCO noted that the use of “Consumer Information” in the definition is inconsistent with the use of the words in section 1618.

Evaluation: We agree that the term as used here is more properly called “Consumer Education.”

Resolution: Replace “Information” with “Education.”

1601(10) – Direct Access Service Request (DASR)

Issue: APS proposed deleting the words “or the customer” at the end of 1601(10) to exclude requests by the end-user because Staff’s changes to APS’s proposed Schedule 10, which were

adopted by the Commission, eliminate the possibility of a direct access request by a customer. TEP proposed deleting “the customer” and inserting “self aggregator.” NEV proposed inserting “and the customer’s current Electric Service Provider” after UDC in 1601(10) because it would be more efficient for ESPs to submit DASRs instead of the customer.

Evaluation: It is more efficient for a customer’s ESP to submit the DASR to the UDC. All Aggregators are ESPs under the rules, thus no other changes are required.

Resolution: Delete “or the customer” at the end of section 1601(10).

1601(13) – Distribution Service

Issue: Trico proposed changing the definition of “Distribution Service” to exclude metering service, Meter Reading Service and billing and collection services.

Evaluation: Trico’s concerns are already addressed in the definition.

Resolution: No change required.

1601(15) – Electric Service Provider

Issue: Trico proposed modifying 1601(15) to delete reference to sections 1605 and 1606.

Evaluation: We concur. We have attempted to revise the rules herein as necessary to eliminate ambiguity and the possibility of conflicting definitions. As the definitions formerly contained in Sections 1605 and 1606 have now been incorporated into the definition of “Competitive Services” in R14-2-1601, this conforming change is necessary.

Resolution: Replace “of the competitive services described in R14-2-1605 or R14-2-1606,” with “Competitive Services”.

1601(16) – Electric Service Provider Acquisition Agreement

Issue: New West Energy (“NWE”) recommended modifying the definition of “Electric Service Provider Acquisition Agreement” to mean a standardized, Commission-approved agreement between an Affected Utility and an ESP. NWE argued that the certification process for ESPs hinders competition and argued in favor of standardized agreements as a way to control the technical and financial viability of competitors.

Evaluation: We do not believe the Certification process is overly burdensome or anti-competitive.

Resolution: No change required.

1601(17) - Generation

Issue: Calpine Power Services (“Calpine”) proposed modifying the definition of generation to the “retail sale of electricity power.” Calpine wanted to distinguish the sale of electrons from the sale of other services.

Evaluation: The current definition is sufficiently clear.

Resolution: No change required.

1601(18) – Green Pricing

Issue: TEP, APS and NEV recommended broadening the definition to include renewable resources other than solar. TEP also recommended deleting “offered by an Electric Service Provider” because “green pricing” shouldn’t be limited to ESPs.

Evaluation: We concur that green pricing should apply to all renewable resources.

Resolution: Delete “solar generated” and insert “generated by renewable resources” after “electricity.”

1601(19) – Independent Scheduling Administrator

Issue: TEP and ASARCO et al. recommended deleting the words “A proposed entity” from the definition of the ISA, as the Arizona Independent System Administrator has been formed.

Evaluation: We concur.

Resolution: Delete “A proposed entity” and insert “an”.

1601(22)- Load Serving Entity

Issue: The Arizona Utility Investors Association (“AUIA”) argued that this definition conflicted with the definition of “Aggregators”. APS recommended deleting the words “or Aggregators” from the end of the definition of “Load-Serving Entity” because aggregators are defined as being an ESP, so that the only “Aggregators” being referenced in this section are “self-aggregators” a concept that no longer has relevance. NEV also recommended deleting “or Aggregators.”

Evaluation: The inclusion of the term “Aggregators” here is redundant and confusing.

Resolution: Delete “or Aggregators” at the end of the sentence and insert “and” before

“Meter reading Service Provider.”

1601(24) – Meter Reading Service Provider

Issue: APS recommended inserting “that provides other ESPs” after “entity” and deleting “providing” to clarify that the “entity” being provided meter reading service is the ESP, not the end-use customer. Trico proposed replacing “an entity” with “a Utility Distribution Company” in both subsections (24) and (25).

Evaluation: Trico’s definition is too restrictive. We believe the definition is sufficiently clear without modification.

Resolution: No change is required.

1601(25) – Meter Service Provider

Issue: APS proposed adding the words “to other ESPs” to the end of the definition.

Evaluation: We believe the definition sufficiently clear without modification.

Resolution: No change is required.

1601(27) – Must-Run Generation Units

Issue: To recognize FERC’s role in the determination, Calpine proposed adding the words “as may be determined by the Federal Energy Regulatory Commission” to the end of the definition.

Evaluation: We concur.

Resolution: Insert “as may be determined by the Federal Energy Regulatory Commission” at the end of the sentence.

1601(28) – Net Metering or “Net Billing”

Issue: ASARCO and RUCO recommended eliminating this definition as it is not needed with the elimination of the Solar Portfolio requirement. NEV recommended adding “or other approved renewable generators.”

Evaluation: This term is not necessary after the elimination of the solar portfolio requirements.

Resolution: Delete subsection (28) and renumber accordingly.

1601(29) – Noncompetitive Services

Mohave and Navopache recommended adding the following to the end of the definition of

“Noncompetitive Services”: “Metering, meter ownership, meter reading, billing, collections and information services are deemed to be non-competitive services in the service territories for distribution cooperatives.” Mohave and Navopache argue that it is necessary that the relationships and communication links between a cooperative and its members/customers be maintained for membership, voting and other purposes.

ASARCO recommended inserting the word “certain” before “Federal Energy Regulatory Commission” and the words “which are precluded from being competitive” after “ancillary services”, as certain FERC required ancillary services may be competitive.

Trico proposed this definition should be simply “all aspects of retail electric service except Competitive Services.”

APS recommended placing a comma after “Standard Offer Service”, otherwise APS argued the sentence has a completely different meaning.

TEP proposed adding the words: “or other services approved by the Commission as ‘noncompetitive’” at the end of the first sentence.

NEV proposed inserting “which are only allowed to be provided by an Affected Utility or a Utility Distribution Company pursuant to” before “R14-2-1613K”.

Evaluation: This definition needs clarification and should incorporate all the definitions of noncompetitive services found elsewhere throughout the rules. The second sentence of this definition more properly belongs with the definition of “Standard Offer Service” in R14-2-1601(38).

Resolution: Place a comma after “Standard Offer Service”, incorporate all definitions of noncompetitive services found elsewhere in the rules, and move second sentence to the definition of “Standard Offer Service” in R14-2-1601(38).

1601(36) – Self-Aggregation

Issue: APS recommended deleting the definitions of “self-aggregation” as APS noted the concept was eliminated by Staff’s amendments to APS’s proposed schedule 10. According to APS, Staff’s amendments require all customers to obtain aggregation service through an ESP.

Evaluation: We concur.

Resolution: Delete subsection (36) and renumber accordingly.

1601(37) – Solar Electric Fund

Issue: TEP, APS, Arizona Electric Power Cooperative, Inc., (“AEPCO”) Duncan Valley Electric Cooperative, Inc. (“Duncan”) and Graham County Electric Cooperative, Inc. (“Graham”), ASARCO et al. and RUCO recommended deleting the definition of “Solar Electric Fund” consistent with their recommendation to eliminate the Solar Resource Portfolio.

Evaluation: We concur. See the discussion for R14-2-1609.

Resolution: Delete subsection (37) and renumber accordingly.

1601(38) – Standard Offer Service

Issue: AEPCO and Trico, with the support of Duncan and Graham, suggested changes to R14-2-1606(A) in order to conform it to Section 23 of HB 2663, which limits the Affected Utilities’ requirement to serve as Provider of Last Resort to consumers whose annual usage is 100,000 kWh or less. For purposes of clarity, AEPCO’s suggested language should be provided within this definition.

Evaluation: It is important that the Rules conform to the same kWh limit as State legislation, and this language should be added to the Rules.

Resolution: Modify this definition in accordance with AEPCO’s suggested recommended additional language for R14-2-1606(A).

1601(39) – Stranded Cost

Issue: APS recommended replacing “value” with “net original cost” in (39)(a)(1), and adding a subsection (d) as follows: “Other transition and restructuring costs as approved by the Commission.” APS argued the possibility of such costs were allowed by Decision No. 60977.

ASARCO et al. recommended adding the following after the words “generation assets”: “at a sales price at or above the minimum bid price for each asset approved by the Commission as necessary to effect divestiture without incurring transition costs that would cause the delivered price of power to customers to be greater under competition than under regulation.” ASARCO et al. argued that Affected Utilities must not be allowed to use divestiture as a means to dispose of uneconomic investments at the expense of consumers.

TEP proposed that the date should be changed to the start-date for electric competition as proposed by TEP of October 1, 1999.

Trico proposed deleting “(such as generating plants, purchased power contracts, fuel contracts, and regulatory assets),” and “or entered into prior to December 26, 1996,” in (39)(a)(1). Trico argued Stranded Costs should not be restricted to Stranded Costs as to generation assets only. Trico proposed adding “and reasonable employee severance and retaining costs necessitated by electric competition where not otherwise provided.” Trico argued the Commission does not have authority to mandate divestiture.

Evaluation: We concur with APS that clarifying “value” and including “other Commission-approved transition costs” are warranted. We do not believe the date should be changed as suggested by TEP. We believe Trico’s concerns are already addressed in the rule. We believe ASARCO et al.’s concerns will be addressed in each Affected Utility’s Stranded cost proceeding.

Resolution: Replace “value” in (3)(a)(1) with “net original cost” and insert a new subsection(d) as follows: “Other transition and restructuring costs as approved by the Commission.”

1601(40) – System Benefits

Issue: AEPCO with the support of Trico, Duncan and Graham argued that subsection (40) should be modified to include fossil plant decommissioning costs and suggested examples of “market transformation” costs. APS proposed adding “customer education” to the definitions of System Benefits.

Citizens Utility Company (“Citizens”) recommended a new definition for “Market Transformation” as follows: “activities by a Utility Distribution Company to transform its business processes and enable its customers to take competitive services offered by Electric Service Providers.” Citizens stated the costs for required new functions should be submitted to the Commission for review and recovery. Alternatively, Citizens recommended an additional subpart to the definition of Stranded Costs to allow for the recovery of these costs of competition. “Costs for new Utility Distribution Company functions (such as customer education and modifications and additions to key business processes) necessitated by the introduction of competition.”

Citizens also recommended the following additional subsection to Stranded Costs: “Costs associated with metering, meter reading, billing, collections and other consumer information services rendered unrecoverable by the introduction of competition for these services.”

ASARCO et al. proposed adding to the end of the definition of System Benefits the following: “provided, however, that systems benefits charges associated with nuclear power should be applied only to customers of utilities receiving power from nuclear power plants.”

Calpine proposed the definition of “Systems Benefits” should read “may include Commission-approved utility low income and demand side management programs.” Calpine noted that Systems Benefits will vary among Affected Utilities, and that the notion of “market transformation” costs as being recovered beyond the stranded cost recovery period or in addition to any competitive transition charge would distort the market environment.

RUCO recommended the elimination of “market transformation” and “long-term public benefit research and development and nuclear power plant decommissioning” before “programs”.

TEP proposed adding “non-nuclear” decommissioning programs and other programs approved by the Commission.

Evaluation: We agree that any unmitigated recovery of market transformation costs, apart from consumer education, should be recovered as Stranded Costs. We also agree that System Benefits should include consumer education.

Resolution: Insert “consumer education” after “demand side management,” and delete “market transformation”.

1601(43) – Unbundled Service

Issue: APS proposed adding “and/or” before “priced separately” because not all electric service elements that are “priced” by a UDC can be provided by an ESP on a stand-alone basis. Trico proposed that Unbundled Service mean “Generation, Transmission (and Ancillary as defined by FERC) and Distribution Service priced separately.”

Evaluation: We concur with APS. Trico’s concerns are already addressed in the rule.

Resolution: insert “/or” before “priced separately”.

1601(44) – Utility Distribution Company

Issue: APS recommended the definition of UDC as follows: “the electric utility regulated by the Commission that operates and maintains the distribution system for the delivery of power to the end user point of delivery on the distribution system. For purposes of R14-2-1617, UDC also includes any affiliate of an ESP that would be deemed a UDC if operating in Arizona, and subject to the Commission’s jurisdiction.” APS argued whoever constructs or owns the distribution system is irrelevant, as operational control is the relevant point. APS argued its proposed amendments generally exclude non-jurisdictional entities from the definition of UDC, but allow for the equal application of section 1617 to ESPs with out-of-state UDCs or in-state UDCs not subject to the Commission jurisdiction.

Evaluation: We concur with APS.

Resolution: Insert a new definition as proposed by APS above.

R14-2-1602 – Filing of Tariffs by Affected Utilities

Issue: AEPCO, with the support of Trico, Duncan and Graham, and APS recommended striking the existing language which requires tariffs to be filed by December 31, 1997, as this date is obviously outdated. AEPCO, with the support of Trico, Duncan and Graham, suggested using this rule to establish a new start date for competition through a separate Order: “The Commission will, by separate order, establish a coordinated commencement date for competitive services and other requirements established by these Rules.”

ASARCO et al. recommended modifying the date for filing tariffs to March 19, 1999 and adding “such tariffs shall be unbundled to the highest kV service level of the historic retail customer base.” ASARCO et al. argued that customers should only be required to pay those costs that are required for the service they receive.

Evaluation: We agree that this section as currently drafted is meaningless. Consequently, we will delete the existing language and utilize this section to enact a new start date for competition. We agree with the general consensus that competition within an Affected Utility’s service territory cannot start until the issue of Stranded Costs is addressed. The Affected Utilities and other interested parties have proposed a procedural schedule that contemplates resolving the Stranded Cost issues by October 1999. Consequently, we propose to establish a new start date for competition for

each Affected Utility by separate order as part of their Stranded Cost/Unbundled Tariff Proceeding. It is our intent to encourage the Affected Utilities to resolve the Stranded Cost issues by restricting their competitive electric affiliates' ability to provide competitive services in the service territory of another Affected Utility until the Affected Utility's service territory is open to competition by order of the Commission. Furthermore, in the event an Affected Utility's service territory is open for competition prior to January 1, 2001, its customers will have access to competitive services subject to the phase-in schedule of R14-2-1604.

Resolution: Delete existing provision and replace with new Section "R14-2-1602 Commencement of Competition".

R14-2-1603 – Certificates of Convenience and Necessity

1603(A)

Issues: AEPCO, with the support of Trico, Duncan and Graham, recommended modifying 1603(A) to remove the forced divestiture element of 1616(A). Trico proposed modifying 1603(A) to omit reference to sections 1605 or 1606 and to delete the last two sentences of 1603(A). Trico argued the rule should be clear that an Affected Utility has the right under its existing CC&N to provide electric service and is not required to obtain a CC&N under this rule.

APS recommended deleting the words "or self aggregators" and "self aggregators" and inserting "competitive" before "information" in the first sentence and deleting "services". In the fourth sentence, APS proposed inserting "competitive metering and meter reading services" after "distribution". APS argued its changes distinguish between competitive and non-competitive metering and billing services and also between services provided by Affected Utilities within their current CC&Ns and any proposal to provide those services outside that area. These changes are also consistent with APS's proposed amendment to Rule 1616.

ASARCO et al. proposed deleting the third sentence of section 1603 referring to Aggregators and Self-Aggregators. ASARCO et al. noted that the proposed deleted language is unnecessary and confusing because by definition aggregators must be ESPs.

Mohave recommended deleting the last sentence of subsection 1603(A), claiming it is not needed due to proposed changes to R14-2-1616.

NWE recommended modifying 1603(A) by inserting “statewide” to modify Certificate of Convenience and to eliminate “self aggregation” from those services not requiring a Certificate.

NEV recommended that 1603(A) be modified to clarify that Aggregators and Self-Aggregators are required to “obtain generation and energy scheduling through an approved Electric Service Provider.”

Evaluation: This rule must be clarified in order to provide needed certainty to all stakeholders in the electric restructuring process. The definition of “Aggregator” in R14-2-1601 should control throughout the rules, and conflicting references should be deleted. It should be clarified that after January 1, 2001, only Utility Distribution Companies will provide Standard Offer Service, unless or until this Commission determines otherwise .

Resolution: Replace “services described in R14-2-1605 or R14-2-1606, other than services subject to federal jurisdiction” with “Competitive Services”. Delete second sentence to comport with our clarifying revision to R14-2-1605. Delete third sentence of R14-2-1603(A). Replace “An Affected Utility” with “A Utility Distribution Company” and delete language which is now included in defined term “Standard Offer Service”. Capitalize defined term “Standard Offer Service”. Delete “other” in last sentence.

1603(B)

Issue: APS proposed a new (B)(7) as follows: “An explanation of how the applicant intends to comply with the requirements of R14-2-1617, or a request for waiver or modification thereof with an accompanying justification for any such requested waiver or modification.” APS stated this proposal is consistent with its position that any affiliate restrictions should apply equally to all market competitors.

NWE recommended eliminating the requirement in the certification process of 1603(B) to provide a tariff of maximum rates and to delete 1603(B)(4) through (7). NEW believed it too burdensome for the Commission to seek information on technical and financial capabilities of the ESP.

Evaluation: We concur with APS’ proposed (B)(7).

Resolution: Insert APS’ proposed(B)(7). Insert “to” between “and” and “provide” in R14-

2-1603(B)(4). We do not believe the certification process under these rules to be overly burdensome for the Commission to seek information on technical and financial capabilities of the ESP. We believe it provides the Commission with valuable oversight that serves the public interest.

1603(E), (F), (G)

APS proposed replacing “serving notification” with “providing a copy to” in section (E), and adding a sentence to the end as follows: “The attachment to the CC&N application should include a listing of the names and addresses of the notified Affected Utilities, Utility Distribution Companies or an electric company not subject to the jurisdiction of the Arizona Corporation Commission.” APS proposed this change as neither APS nor its legal counsel has been receiving notification or copies of CC&N applications.

NWE recommended eliminating all of 1603(E) and (F), believing the requirement to serve information on a competitor is anti-competitive and the provision that permits limited Certificates as a bureaucratic obstacle to market entry. Consistent with its views on certification, NWE recommended striking 1604(G)(2), (4) and (5).

Evaluation: We do not believe the certification process under these rules to be overly burdensome or anti-competitive. We believe it provides the Commission with valuable oversight that serves the public interest. We also believe that the Utility Distribution Company should receive notice of an ESP’s intent to utilize their regulated distribution system for planning purposes. Consequently, we do not accept NWE’s proposed modifications.

Resolution: Add APS’ proposed language changes to R14-2-1603(E). Insert “an” between “have” and “Electric” in R14-2-1603(G)(3).

1603(I)

Issue: Calpine and NWE proposed deleting “and relevant to resource planning;” from subsection (I)(1). Calpine argued the term “resource planning” is not defined in these rules and that with open access of transmission and competitive marketing of generation, the need for the integrated resource function by the Commission is not appropriate.

To clarify that ESPs are subject to Commission jurisdiction, Mohave recommended a new subpart (I)(9) as follows: “As a public service corporation, the Electric Service Provider shall be

subject to the continuing jurisdiction of the Commission.”

NWE recommended deleting 1603(I)(2) and (3) because they require disclosure of information that could purportedly cause harm to an ESP. NWE argued that disclosure of accounts and records is a remnant of regulation that is not necessary in a competitive market. NWE wanted to delete “And any service standards that the Commission shall require” from 1603(I)(4) as it is undefined, and to delete 1603(I)(6) requiring compliance with state-law permit and license requirements. NWE also suggested deleting 1603(J).

The Arizona Community Action Association (“ACAA”) recommended requiring ESPs to serve some portion of the residential market by adding a provision in the rules to require submission of a plan to serve residential customers and to allow for revocation of a Certificate if no plan is received.

Evaluation: Based on an initial review of the rules, we are not convinced changes to this rule are necessary.

Resolution: No change is necessary.

R14-2-1604 – Competitive Phases

Issues: Tucson recommended deleting the reference to requiring a single premise non-coincident peak load demand of 40 kw or greater to be able to aggregate to become eligible for competitive electric services.

ASARCO et al. proposed modifying 1604(A) to provide that at least 30% of 1998 system retail peak demand be available for competitive generation, and deleting the reference to the first come first serve basis and the remainder of the subsection. ASARCO proposed revising section 1604(A)(3) to permit all loads served by Load Serving Entities under special contracts to be eligible for competitive services upon the expiration of the special contract notwithstanding the proposed 30 percent limitation.

Calpine proposed that access to competitive service start October 1, 1999 and that 40% of the Affected Utilities 1995 system retail peak demand be eligible for competitive generation. Calpine recommended 2 % of residential customers be eligible and that the number should increase

by 2 % each quarter until January 1, 2001.

TEP proposed a start date of October 1, 1999 for the 20% phase-in. TEP's recommendation is predicated on the Commission resolving issues on stranded costs, unbundled tariffs and operational reliability protocols in time for the companies to implement the changes in their systems. TEP stated that if competition does not start on or before October 1, 1999, it should not start until at least March 31, 2000 because of the "Y2K" problem.

TEP argued that using a "non-coincident" peak has unintended consequences and that only customers with a minimum 1MW demand should be eligible for direct access. Consequently, TEP proposed replacing "non-coincident peak load" with "minimum" in 1604(A)(1) and (2) and replacing "month" with "six months" in (A)(2).

Sempra Energy Trading Corp. ("Sempra") recommended making all customers eligible to receive competitive energy on September 1, 1999, and eliminating most of the rest of the provisions of section 1604, except requiring Affected Utilities to inform customers of the start of competition by an unnamed date and requiring Affected Utilities to file a report detailing possible mechanisms to provide benefits to Standard Offer customers. Sempra's proposal also retains the provision for customers under contract to participate in competition and the ability to engage in buy-throughs and schedule modifications for cooperatives.

APS suggested replacing "180" days with "60" days in 1604 (A). APS proposed adding the words "single premise" after "non-coincident" to make this subsection consistent with section 1604(A)(2). APS proposed inserting "by an Electric Service Provider" after "aggregated" in 1604(A)(2) and deleting the sentence referencing self aggregation. APS recommended deleting 1604(A)(3) and 1604(C) as the referenced dates have passed and they are moot. APS proposed deleting the remainder of the sentence of (D) after "January 1, 2001". APS recommended the deletion of 1604(G) because it is unnecessary and confusing since UDCs can already engage in buy-through transactions through special contracts if approved by the Commission while ESPs may engage such transactions whether or not approved by the Commission. TEP, NEV and NWE also recommended deleting section 1604(G) ASARCO argued that buy-throughs are required to protect consumers from delays in competition.

NWE recommended deleting the last sentence of 1603(A)(2) because it penalizes small customers who might not be prepared to aggregate in the early phases of competition. NWE argued that 1604(A) in general provided inadequate information of the mechanics of customer selection.

Tucson proposed a new section (A)(4) as follows: “Load profiling may be used; however, residential customers participating in the residential phase-in program may choose other measurement options offered by their Electric Service Provider consistent with the Commission’s rules of metering.”

The Arizona Attorney General’s Office (“AG”) recommended inserting the following in 1604(A) after “rule”: “provided that, for any given class of customer, if customer demand for competitive generation services exceeds this 20%, the Affected Utility shall make available such additional percentage as is consistent with customer demand . . .” In 1604(A)(2) the AG proposed substituting “customer” for “premise”.

ACAA recommended increasing “1 ¼ % of residential customers” to “15% of residential customers” in 1604 (B).

RUCO proposed that a minimum of 10% of residential customers have access to competitive services on October 1, 1999 and that the number increase by 5% every six months until October 1, 2001. Further, RUCO proposed that Affected Utilities file an application by November 1, 1999 to decrease standard offer rates by at least three to five percent.

Citizens recommended changing the references of “1 ¼ %” of residential customers to “1/2%” in subsection (B)(1). NWE argued section 1604(B) should be entirely revised as it removes incentive for ESPs to pursue contracts with residential customers.

TEP proposed allowing ¼ of 1% of residential customers to participate in competition and that the number increase by ¼ of 1 % every quarter until January 1, 2001, as originally proposed by Staff. TEP also wanted 1604(B)(5) to be modified to provide for semi-annual reports rather than quarterly reports and that (B)(5)(d) should be deleted.

Tucson recommended eliminating the phrase “benefits such as rate” from 1604(C). NWE argued that a mandatory rate reduction will have an anti-competitive effect unless applied to all customers. NWE argued that any mandated rate reduction should specify that the reduction must

occur in the CTC, the transmission rate or the distribution rate.

Mohave recommended deleting the references in 1604(A)(3), (B)(4), and (C) to notices, programs and reports for which the filing deadlines have already passed. Mohave recommended deleting the second clause of 1604(D) concerning the ability to aggregate after January 1, 2001.

TEP recommended deleting “including aggregation across service territories” from the end of 1604(D).

NEV proposed a new 1604(H)(4) as follows: “If an electric cooperative is granted a delay in implementing competition, then any Electric Service Provider affiliated with the electric cooperative or which has the electric cooperative as a member will be prohibited from providing services in Arizona until competition has begun in the electric cooperative’s service territory.

Trico recommended deleting 1604(A)(3), (B)(2), (C), (E), and (H)(2) and (3) as the matters are moot. Trico also proposed revising (D) to provide all customers are “eligible for competitive services no later than January 1, 2001, at which time all customers shall be permitted to aggregate, but not across service territories.”

Evaluation: There have been almost as many recommendations for a new phase-in plan as there have been entities commenting on these rules. We believe that until January 1, 2001, the phase-in schedule should be retained. To the extent an Affected Utility’s service territory is opened for competition prior to January 1, 2001, it should make 20% of its 1995 system retail peak load available for competitive services. Further, the Affected Utility should reserve demand to provide an increasing percentage of retail customers with access to competitive generation. The percentage of retail customers eligible for competitive generation should start at 1 ¼ percent and increase by 1 ¼ percent quarterly until all customers are eligible for competitive services after January 1, 2001.

We agree that the effective date of Direct Access Service Requests (“DASR”) should be within sixty days of the date of the DASR. We also agree that the provision permitting buy-throughs should be eliminated as well as the reference to self-aggregation.

Given the stay of the rules and the delay in the introduction of competition, we have revised the date that an Affected Utility must notify its customers of their eligibility, to 60 days prior to the start of competition within its service territory. Our revisions also set the date of November 1, 1999

for filing a report that details benefits to Standard Offer customers that includes a 3 to 5 percent rate reduction.

We believe that NEV's concern about the fairness of delays in implementing competition for cooperatives are addressed in R14-2-1602(B).

Furthermore, subsection (E) should be deleted in light of our decision concerning the solar portfolio. Based on our initial review of Tucson's and TEP's comments concerning particular demand load criteria, we are not convinced that additional changes are necessary. We do not accept the arguments that during the transition period entities currently under special contracts should automatically be eligible for competitive services upon the expiration of the contract.

Resolution: Revise subsections (A),(B),(C),(D), (E) and (G) as discussed above.

R14-2-1605 – Competitive Services

Issue: APS and ASARCO et al. recommended that R14-2-1605 (B) be modified to comport with the definitions of "Aggregator" (R14-2-1601(2)) and "Noncompetitive Services" (R14-2-1601(29)). TEP and New West Energy also recommended that the portion of R14-2-1605 (B) providing that aggregation of retail customers is a competitive service should be deleted.

Calpine commented that because "Generation" is a defined term in the Rules, its definition in R14-2-1605(A) should be deleted, and that the defined term "Noncompetitive Services" should be capitalized in R14-2-1605(B) where appropriate only.

Trico, with the support of Duncan and Graham, recommended that R14-2-1605 be shortened to state that ESPs may provide "Competitive Services," and that the definition of "Competitive Services" should exclude metering, meter reading, and billing and collection. AEPCO recommended that this Section should allow Affected Utilities to provide competitive services in its service territory.

NEV suggested that the current R14-2-1605(B) be deleted and replaced by new Sections B-G for clarity and consistency. NEV's proposed new R14-2-1605 would retain the current R14-2-1605 requirement of a Certificate of Convenience and Necessity for the provision of any and all competitive retail electric services, and would preclude the option of self-aggregation.

Evaluation: This Section would be clarified by utilizing references to the definitions provided by R14-2-1601 in lieu of restating those definitions within the remainder of the Rules. The definition of “Competitive Services” should not exclude the services Trico.

Resolution: Modify R14-2-1605 and R14-2-1601 accordingly.

R14-2-1606 – Services Required to Be Made Available

1606(A)

Issue: AEPCO and Trico, with the support of Duncan and Graham, recommended adding “and Utility Distribution Company” after “Each Affected Utility” in R14-2-1606 (A), and APS recommended adding “or Utility Distribution Company”.

Evaluation: “Utility Distribution Company” should be added to this Section as recommended, and also to other applicable provisions in the Rules.

Resolution: Change R14-2-1606 (A) and other applicable provisions in the Rules accordingly.

Issue: APS recommended including in R14-2-1606(A) language referring to the definitions of “Standard Offer Service,” (R14-2-1601(38)), and “Noncompetitive Services” (R14-2-1601(29)) in lieu of re-defining those terms within the Section.

Evaluation: These modifications add clarity and should be adopted, along with a modification to R14-2-1601(38) changing “Standard Offer” to “Standard Offer Service”.

Resolution: Modify R14-2-1606 (A) and R14-2-1601(38) accordingly.

Issue: APS recommended deletion of reference to R14-2-1602.

Evaluation: Our revision to R14-1602 makes this unnecessary.

Resolution: No change is necessary.

Issue: NWE submitted that the Standard Offer tariff referred to in R14-2-1606 is anti-competitive and should be phased out six months after competition begins.

Evaluation: Our revisions to the definition of “Standard Offer Service” in R14-2-1601 address these concerns.

Resolution: No change is necessary.

Issue: AEPCO and Trico, with the support of Duncan and Graham, also suggested changes to R14-2-1606(A) in order to conform it to Section 23 of HB 2663, which limits the Affected Utilities' requirement to serve as Provider of Last Resort to consumers whose annual usage is 100,000 kWh or less. In support of its suggested change, AEPCO characterizes consumers with an annual usage of greater than 100,000 kWh as large industrial and commercial consumers. AEPCO raised the concern that requiring Affected Utilities to serve as Provider of Last Resort would provide the opportunity for large, sophisticated customers to "game the system" by going on Standard Offer Service in order to obtain lower generation prices when convenient. AEPCO also proposed that removal of the last sentence of 1616(A) "removes the forced divestiture element of the current Rules."

Evaluation: It is important that the Rules conform to the same kWh limit as State legislation, and this language should be added to the Rules. However, maintaining a "Provider of Last Resort" is imperative so that no consumer will reasonably be left without access to the vital resource of electric power. For purposes of clarity, AEPCO's suggested language should be provided within the definition of "Standard Offer Service" in R14-2-1601.

Resolution: Modify the definition of "Standard Offer Service" in R14-2-1601 in accordance with AEPCO's suggested additional language. No change to "Provider of Last Resort" provision in R14-2-1606(A) is necessary.

R14-2-1606(B)

Issue: The City of Tucson recommended that R14-2-1606(B) be revised to specify that UDCs be required to purchase power to serve their Standard Offer customers from the "low bidder meeting specifications."

AEPCO and Trico, with the support of Duncan, Graham and Sulphur Springs, recommended that R14-2-1606(B) be deleted entirely, claiming that the provision is unnecessary because market forces alone will drive the Utility Distribution Companies to seek lowest cost Standard Offer sources and mixes. AEPCO and Trico, with the support of Duncan and Graham, also stated in their comments that R14-2-1606(B) breaches their all-requirements agreement.

TEP, APS, and Calpine all requested removal of the ratchet down provision of R14-2-

1606(B). TEP commented that the ratchet-down provision would likely be expensive, and that Commission oversight of the UDC's long-term power purchases is sufficient. APS commented that there is no precedent for this provision anywhere in the country. Calpine commented that the ratchet down provision requirement is vague, would be difficult to administer, and could lead to claims of a failed bid process. Calpine further commented that allowing the UDCs to seek Commission modifications of the bid process could circumvent the Commission's goal of creating competitive electric markets.

APS recommended that UDCs not be required to seek competitive bids at all, but should be directed to acquire power for Standard Offer customers through the open market. TEP recommended inclusion of language in R14-2-1606(B) allowing the UDC and the Commission to "consider alternatives to the competitive bid process."

APS and TEP both requested the inclusion of language in R14-2-1606 which would allow UDCs to recover all purchased power costs for the provision of Standard Offer generation service through a purchased power adjustment mechanism approved by the Commission. APS recommended that such a purchased power adjustment mechanism should be approved by the Commission prior to January 1, 2001.

AUIA also commented that R14-2-1606 (A) and (B) are flawed and will increase costs for Standard Offer customers, and that they conflict with the transmission access principles in R14-2-1610.

Evaluation: We agree with the numerous parties who were critical of the "ratchet down" provision in R14-2-1606(B). While the intent behind this provision was to keep costs down for Standard Offer customers, we believe that in practice it would not accomplish this goal, and worse, would only forestall the realization of our goal of fostering a competitive retail electric market in Arizona. It is our view that because the very purpose of this electric restructuring effort is to foster a competitive retail electric market, all purchases of generation should occur on the open market. As AEPCO pointed out, market forces alone should drive the UDCs to seek the lowest cost generation sources and mixes of generation. However, the purchased power adjustor mechanism proposed by APS and TEP would have the exact opposite

effect. The proposed purchased power adjustor mechanism would allow UDCs to recover all Standard Offer generation costs. If the UDCs were able to pass Standard Offer generation costs directly through to customers via the purchased power adjustor mechanism, the UDCs would lose the incentive to seek lowest cost Standard Offer generation sources and mixes. The combination of open market purchase of Standard Offer power with a purchased power adjustor mechanism would have anticompetitive effects and we therefore cannot combine these options in the Rules. One alternative to APS' and TEP's requested Rule modifications in this regard would be to require competitive bids and institute the requested purchased power adjustor mechanism. However, we believe that this avenue would be expensive and would not lead to a competitive generation market in Arizona within the foreseeable future. It is therefore an undesirable option. The alternative course of action would be to allow the UDCs to actively participate in the open market, and also to provide the UDCs with an incentive to obtain the lowest cost source of generation sources and mix by requiring the UDCs to request a rate increase in order to pass increases in generation costs on to Standard Offer customers. We believe this to be the best option and have modified R14-2-1606 accordingly. In order to prevent hardship to the UDCs in the event a rate increase becomes absolutely necessary, those rate requests should be treated expeditiously. By this Rule revision, the Commission wishes to send a clear message to UDCs that whenever possible, it will be more preferable and desirable to find the lowest-cost generation sources and mix available than to seek a rate increase to pay for higher-cost generation for Standard Offer customers.

Resolution: R14-2-1606(B) has been modified to delete the ratchet down provision, and to provide that Standard Offer power purchased after January 1, 2001 shall be purchased on the open market. Language has also been added to R14-2-1606(C)(2) to provide for expeditious treatment of rate requests.

R14-2-1606(C)

Issue: RUCO suggested that additional language be included in R14-2-1606(C)(1) to require that Standard Offer Bundled Service tariffs include the same billing cost elements as the Unbundled Service tariffs.

Evaluation: The suggested language changes will provide needed guidance for the Affected Utilities to follow in the unbundling process. The filing of new Standard Offer tariffs should be required so that the Commission can examine the cost elements. Comporting changes to R14-2-1613(O) and a new R14-2-1613(P) are also necessary and should be made.

Resolution: New language has been added to R14-2-1606(C)(1) requiring that each Affected Utility must file Standard Offer tariffs that include the billing cost elements required by R14-2-1613(O). Comporting changes have been made to R14-2-1613(O) and a new R14-2-1613(P) has been added. Delete language that made the filing of new Standard Offer tariffs optional.

Issue: NEV recommended that an exception be made to R14-2-1606(C) to preclude the inclusion in Standard Offer service of special discounts or contracts with term, including but not limited to time-of-use rates, interruptible rates, self-generation deferral rates, or any tariff which would prevent consumers from accessing a competitive option.

Evaluation: Time-of-use rates, interruptible rates or self-generation deferral rates are more in line with demand side management than with Competitive Services. While ESP's should be free to contract with their customers to offer such rates, UDC's should not be precluded from managing demand by means of these measures. The remainder of NEV's suggested language is reasonable.

Resolution: Subsection (5) has been added to R14-2-1606(C) to preclude the inclusion in Standard Offer service of special discounts or contracts with term, or any tariff which would prevent consumers from accessing a competitive option. The definition of "Standard Offer Service" in R14-2-1601(36) has also been clarified to include demand side management services.

Issue: APS requested that the language in the second sentence in R14-2-1606(C)(2) be deleted, because Commission expectations do not belong in a Rule. APS also requested deletion of the portion of R14-2-1606(C) stating that rate increase proposals must be fully justified through a rate case proceeding.

Evaluation: In our discussion of the changes to R14-2-1606(B) we explained the necessity of rate case justification for rate increases. If a rate request becomes absolutely

necessary, and expedited rate case proceeding should be available to UDCs.

Resolution: Add language providing that rate case proceedings may be expedited at the discretion of the Utilities Division Director to R14-2-1606(C)(2).

Issue: APS requested a modification of the language in R14-2-1606(C)(3) and (4).

Evaluation: The provision in R14-2-1606(C)(3) is adequate in its current form, but the wording changes in R14-2-1606(C)(4) should be adopted.

Resolution: Modify R14-2-1606(C)(4) to delete language referring to a specific Commission Decision.

Issue: The Arizona Consumers' Council recommended that a new subsection be added to R14-2-1606(C) to require that Standard Offer tariffs may not subsidize costs of competitive customers.

Evaluation: This is a valid concern. The clarification of requirements for the filing of properly unbundled tariffs and standardized billing cost elements made elsewhere in the Rules addresses this issue.

Resolution: The inclusion of the suggested language is unnecessary here.

R14-2-1606(D)

Issue: APS recommended that R14-2-1606(D) be modified to clarify that the Affected Utilities should file tariffs for Noncompetitive Services as defined in R14-2-1601(29). Mohave and Navopache also suggested additional language for inclusion in R14-2-1606(D) to clarify the difference between Unbundled Service tariffs and Standard Offer tariffs.

Evaluation: Clarification of this provision is necessary.

Resolution: Modify R14-2-1606(D) and R14-2-1601(28) accordingly.

Issue: ASARCO et al. proposed that language be added to R14-2-1606(D) requiring that Unbundled Service tariffs be based on electric service requirement charges, rather than on consumption, because unbundled rates based on consumption have little relationship to actual service provision costs, and because such changes would preclude the UDCs' need for competitive energy consumption information. The proposed language also offers the optional filing of unbundled tariffs based on simple energy consumption (kwh).

Evaluation: Because UDCs will retain the obligation to insure adequate transmission import capability to meet the load requirements of all customers within their service areas under our revisions to R14-2-1610, we will not include this suggested language in R14-2-1606(D).

Resolution: No change is necessary.

Issue: ASARCO et al. suggested that R14-2-1606(D)(2) be modified in conformance with its suggested change to R14-2-1616(B).

Evaluation: Our modification of R14-2-1616(B) renders this change unnecessary.

Resolution: No change is necessary.

Issue: APS recommended that “Utility Distribution Company” be added to R14-2-1606(E).

Evaluation: The intent of the Rules is that Utility Distribution Companies will not provide Unbundled Services as defined in R14-2-1601(43), but will provide Noncompetitive Services as defined in R14-2-1601(29). Under the Rules, until such time that an Affected Utility completes its spin-off of competitive affiliates, the Affected Utility may continue to provide Unbundled Services, but the provision of Unbundled Services will cease afterward. The inclusion of “Utility Distribution Company” in R14-2-1606(E) would therefore not be proper.

Resolution: No change is necessary.

Issue: AEPCO recommended that R14-2-1606(F) be modified to preclude possible FERC jurisdictional conflicts. APS recommended complete removal of R14-2-1606(F).

Evaluation: This provision should reflect that federal filings must be made by UDCs in accordance with FERC Orders 888 and 889.

Resolution: Modify R14-2-1606(F) accordingly.

Issue: AEPCO recommended that R14-2-1606(G)(1) be revised so that Load-Serving Entities are not required to release customer information that is unavailable to them.

Evaluation: Because R14-2-1606(G)(3) provides that data shall not be “unreasonably withheld,” it already meets AEPCO’s stated objective. However, this provision is unclear as to when Load-Serving Entities may charge for this service, which is required to be tariffed elsewhere in the Rules. It should be made clear under what circumstances Load-Serving Entities

may charge their tariffed rate for provision of customer demand and energy data.

Resolution: Add R14-2-1606(G)(4) and renumber accordingly.

Issue: The Arizona Consumers' Council recommended that R14-2-1606(G)(1) be expanded to require that customer data be released only to ESPs who have met all State of Arizona and Commission requirements.

Evaluation: Our revisions to the Rules clarify that all ESPs must be certificated by the Commission. This process provides the Commission with valuable oversight and should keep unscrupulous ESPs out of Arizona's marketplace.

Resolution: Include "properly certificated Electric Service Provider" in this provision.

Issue: APS recommended revisions to R14-2-1606(H) and (I) in order to clarify that rates for competitive services must comply with R14-2-1612.

Evaluation: Clarification is in order with use of defined terms.

Resolution: Replace references to R14-2-1606(D) and (E) with the defined terms "Competitive Services" and "Noncompetitive Services" to. Also replace "where it is" in R14-2-1606(H) with "subject to Commission".

Issue: NEV recommended that a subsection be added to R14-2-1606 to require UDCs to provide credits to consumers who obtain competitive services from a provider other than the UDC.

Evaluation: Properly unbundled bills pursuant to R14-2-1613 should make clear who is providing what service to a consumer, making these recommended "credits" to consumers' bills unnecessary.

Resolution: No change is necessary.

Issue: Sempra recommended the deletion of R14-2-1606(I), stating that its requirements add unnecessary cost burdens to ESPs, and that the market will determine proper rates.

Evaluation: It is in the public interest for the Commission to review and approve all rates at this time. Energy Service Providers are free to seek a waiver from these requirements, which will be considered when a fully competitive market assures that the market truly does determine proper rates.

Resolution: No change is necessary.

R14-2-1607 – Recovery of Stranded Cost of Affected Utilities

1607(A)

Issue: APS proposed deleting the words “means such as” and replacing it with “reducing costs” and inserting “permitted regulated utility” after “scope of”. TEP, Trico, Mohave and Sempra proposed ending the sentence after “Stranded Cost” and not delineating the means of mitigation. TEP asserted that it is unclear whether the markets and services mentioned are regulated or unregulated, and believes that most new products will develop in the unregulated competitive market.

Evaluation: We concur with APS’s proposal.

Resolution: Delete “means such as” and replace with “reducing costs,” and insert “permitted regulated utility” before “Services for profit”.

1607(B)

Issue: APS proposed inserting “full” before “recovery” to make it consistent with the findings in the Stranded Cost proceeding. Trico proposed inserting “all” before “unmitigated”.

Evaluation: We believe that this subsection is sufficiently unambiguous as written.

Resolution: No change is required.

1607(C)

Issue: Trico and Mohave proposed deleting the second sentence of 1607(C). Mohave suggested inserting “together with supporting data” after “Stranded Costs. Tucson recommended adding the word “public” to modify the required estimates of unmitigated Stranded Costs Affected Utilities must file.

Evaluation: We believe this section is sufficiently clear as written.

Resolution: No change is required.

1607(D)

Issue: Calpine proposed that the Affected Utilities file estimates of unmitigated Stranded Costs by March 19, 1999. NEV recommended deleting the remainder of the 1607(D) following

“Article”. ASARCO et al proposed ending the sentence after Stranded Cost”.

The Arizona Transmission Dependant Utility Group (“ATDUG”) recommended adding the following language to the end of section 1607(D) to permit an exit fee: “The filing shall include a discounted stranded costs exit methodology that a customer may choose to use to determine an amount due the Affected utility in lieu of making monthly distribution charge or other payments. Each Affected Utility will bear a high burden of proof concerning stranded costs and mitigation.”

Sempra recommended adding to the end of 1607(D) “Customer specific stranded costs should be allocated to those customers on whose behalf they were incurred.” Sempra argued that directly assignable costs should be allocated to those customers who benefited, otherwise they should be absorbed.

RUCO proposed replacing section (D) with the following” “Unmitigated Stranded Costs eligible for recovery shall be recovered both from customers who reduce or terminate generation service from the Affected utility as a direct result of competition governed by this Article by taking generation service from alternative suppliers, as well as from customers who stay with the Standard Offer service, through a non-bypassable nondiscriminatory competitively neutral wires charge.”

Evaluation: We agree that the CTC should be recovered from all customers. Consequently, we will delete the remainder of the sentence after “Stranded Cost.” We will change the date for filing requests for approval of Stranded costs to March 19, 1999. We concur with ATDUG’s suggestion to include an exit fee methodology, however, we do not believe that the proposed language regarding the standard of proof is necessary. We believe that Sempra’s concerns will be addressed at the Stranded Cost hearing for each Affected Utility.

Resolution: Modify section 1607(D) as discussed above.

1607(E)

Issue: APS recommended deleting the words “Stranded Cost recovery” from (E)(1), (2) and (4), as APS argued it is not the recovery of Stranded Costs that is being considered, but the timing and method of recovery. APS also recommended the deletion of (E)(5), (6) and (7) as redundant, and recommended eliminating (E)(9) and (11) as irrelevant.

Trico recommending deleting subparts (1) through (11) of section 1607(E).

APS suggested inserting the words: “for the recovery of Stranded Cost and the timing of such recovery,” after “charges” in the second sentence of 1607(E).

Tucson suggested adding “public” before “hearing”.

Because TEP believed that the amount of electricity generated by renewable generating resources is inappropriate to consider in determining Stranded Costs, TEP recommended deleting 1607(E)(11) and replacing it with “the impact of Stranded Cost recovery on shareholders of the Affected Utility.”

Evaluation: We do not concur with APS’s interpretation of the purpose of section (E) and will not adopt APS’s proposed modifications, except that we agree that subparts (9) and (11) should be deleted as the ease of determining Stranded Cost and the generation of electricity by renewable sources should not be relevant. Regarding Tucson’s concerns, all of the Commission’s hearings are public.

Resolution: Delete subsections (E)(9) and (11).

1607(F)

Issue: Citizens argued that all customers must pay the CTC. Citizens noted that there has been some confusion that customers who remain on the Standard Offer will somehow effectively by paying for stranded costs through generation costs bundled in the Standard Offer , but if the generation has been divested, Citizens argued the resulting Stranded Cost would not be part of Standard Offer service, except as part of a CTC. Citizens recommended that subsection 1607(F) be modified to read “A Competitive Transition Charge may be assessed on customers eligible to make purchases in the competitive market using the provisions of this Article.”

Sempra proposed 1607(F) be modified to provide the CTC “will” be assessed on “all” customer purchases “regardless of supplier.”

TEP was concerned that customers who leave the distribution system to self-generate as a result of these rules will avoid their fair share of the CTC.

Trico recommended deleting all but the first sentence of 1607(F).

RUCO proposed that the CTC “shall be assessed on all customers continuing to use the distribution system based on the amount of generation purchased from any supplier.”

APS proposed replacing “customer purchases” with “customers purchasing services” in the first sentence of (F) and deleting “using the provisions of this Article” and inserting “verifiable” after “Any” in the second sentence. APS argued its proposed changes clarify that Stranded Cost is recoverable from customers taking competitive service rather than through rates for competitive services, and that such customers include customers taking competitive services from entities that arguably are not “using the provision of this Article”

Evaluation: We agree that all customers should be pay for Stranded Costs. We believe RUCO’s proposed language most clearly addresses the proper assessment of the CTC. We understand TEP’s concern that by leaving the distribution system completely a customer could potentially avoid its share of the CTC, however based on our initial review of. TEPs comments we are not convinced that a change is warranted.

Resolution: Modify the first sentence of section (F) to read “A Competitive Transition Charge (CTC) may be assessed on all customers continuing to use the distribution system based on the amount of generation purchased from any supplier.”

1607(G)

Issue: APS suggested inserting “tariffed” before “rate” in section 1607(G) to clarify that special contract customers are not automatically entitled to special benefits even after the expiration of their contracts.

Evaluation: We concur with APS.

Resolution: Insert “tariffed” before “rate treatment”.

1607(H)

Issue: APS recommended deleting 1607(H) as it is redundant with 1607(C)(1). Trico proposed deleting “or, if negative, to refund” from 1607(H) on the grounds there is no legal basis to refund so-called negative Stranded Costs.

Evaluation: We concur with APS.

Resolution: Delete 1607(H).

1607(I)

Issue: Mohave suggested adding “based upon established facts” at the end of 1607(I). APS

recommended inserting “after notice and hearing” after “The Commission may”.

Evaluation: We concur with APS. We believe this addition should also address Mohave’s concerns.

Resolution: Insert “after notice and hearing” after “The Commission may”.

1607(J) (newly proposed)

Issue: Citizens suggested the adoption of a new subsection (J) as follows: “The Director, Utilities Division will issue no later than March 1, 1999, a description of a common methodology for calculation of Affected Utilities’ CTCs.”

TEP proposed a new subsection (J) as follows: “The Commission may consider securitization as a financing method for recovery of Stranded Costs of the Affected Utility if the Commission finds that such method of financing will result in a lower cost alternative to customers.

Evaluation: We concur with TEP. Based on our initial review of Citizen’s comments, we are not convinced additional changes are necessary.

Resolution: Insert new subsection (H)(after renumbering) as proposed by TEP.

R14-2-1608 – System Benefits Charges

Issue: Citizens recommended deleting the reference in subsection (A) to “Who participate in the competitive market” in order to clarify that both Standard Offer and customers taking competitive power will pay for System Benefits.

TEP, RUCO, Mohave, ASARCO et al., Citizens, Calpine Trico and AEPCO with the support of Duncan and Graham recommended deleting the final two sentences of R14-2-1608(A) concerning the solar water heater rebate program as this program exceeded the Commission’s jurisdiction.

ASARCO proposed adding the following to the end of 1608(A): “provided, however, that only customers benefiting from nuclear power plants shall be required to pay such charges to fund nuclear power plant decommissioning and nuclear fuel disposal programs.”

TEP recommended adding “Direct Access implementation costs”, “non-nuclear plant decommissioning costs” and “other programs approved by the Commission” for inclusion in the Systems Benefits Charge.

Calpine proposed deleting the words “market transformation, environmental, renewables,

long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning.” RUCO proposed eliminating market transformation, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning from the Systems Benefits Charges.

APS recommended deleting: “By the date indicated in R14-2-1602” at the beginning of 1608(A) and inserting “at least” before “every 3 years” in the second sentence. APS suggested adding “At such time, the Commission shall determine whether to eliminate, modify, expand, or add to such programs” after the second sentence, and inserting “customer education, approved solar water heater rebate programs” as programs included in the Systems Benefits Charges.

NWE argued that section 1608 failed to provide adequate notice of the criteria for calculating the System Benefits Charges.

ATDUG recommended adding the following to the end of section 1608(B): “The burden of proof on each Affected Utility or Utility Distribution Company shall be the same as that provided in R14-2-1607.”

Evaluation: We agree that the solar heater rebate program should be eliminated at this time; that the reference to the date in R14-2-1602 and the reference to “who participate in the competitive market” should be deleted; with APS’ proposal to insert “at least” before “every three years”; that “market transformation” programs should be addressed as part of Stranded Costs and that Consumer Education should be included as part of System Benefits. . We do not agree that non-nuclear power plant decommissioning may be a proper System Benefit; this is a charge that clearly should be considered a Stranded Cost subject to mitigation.

Resolution: Delete “By the date indicated in R14-2-1602,” and end the first sentence after “service area”. Insert “at least” before “every 3 years” in the second sentence. Insert “consumer education after low income”, delete “market transformation”, and insert at the end of the sentence “and other programs approved by the Commission.” Delete the last two sentences.

R14-2-1609 – Solar Portfolio Standard

Issue: RUCO, Citizens, APS, ASARCO et al., AEPCO with the support of Duncan and Graham, NWE, Trico, NEV, TEP, and AUIA recommended deleting R14-2-1609 in its entirety.

They argued that the Solar Portfolio Standard is enormously expensive; mandates construction of capacity when none is needed; injects government control into what is supposed to be a deregulated, market-based system; and requires construction of the least efficient solar application. AEPCO, with the support of Trico, Duncan and Graham believed the Solar Portfolio Standard exceeds the Commission's jurisdiction.

TEP stated it supported the concept of a Solar Portfolio Standard, but believed the Rules set a schedule that is too aggressive and costly. TEP recommended that the Integrated Resource Planning Rules should be repealed or revised given the requirement that an Affected Utility separate its generation assets to an affiliate or non-affiliate.

The Land and Water Fund ("LAW Fund") recommended that the solar portfolio be retained.

Mohave suggested ending the first sentence of 1609(C) after "Competitive retail electricity" and adding the sentence "The solar portfolio requirement shall not apply to sales under Standard Offer tariffs."

Calpine proposed clarifying this provision to refer to sales in Arizona by an ESP.

Evaluation: We agree that the Solar Portfolio Standard as currently contemplated in the Rules is extremely expensive and contrary to the spirit of these Rules. We believe that solar generation has the potential to offer great public benefits. However, it must be brought forward in a cost-effective manner. The issue of encouraging the development of economic solar power is more properly addressed as part of Systems Benefits and/or the Integrated Resource Planning docket. In our effort to bring competition in the electric industry to the citizens of Arizona as quickly as we prudently are able, we must defer the issue of a Solar Portfolio Standard at this time.

Resolution: Delete R14-2-1609 in its entirety.

R14-2-1610 – Transmission and Distribution Access

R14-2-1610

Issue: APS recommended that references to an Independent Scheduling Administrator be changed to read "Arizona Independent Scheduling Administrator" in places throughout this Section.

Evaluation: The Arizona Independent Scheduling Administrator is an existing entity

and should be referred to as such in the Rules.

Resolution: Insert “Arizona” where appropriate.

Issue: APS and AEPCO both recommended language for subsection (A) to clarify FERC/Commission jurisdictional issues, and APS recommended wording changes throughout R14-2-1610(C), some of them substantive. AEPCO recommended extensive revamping of this Section, including many deletions, in order to avoid unnecessary jurisdictional conflicts with FERC regarding transmission rights and rates and must-run transactions and services. TEP suggested amendments to R14-2-1610 to reflect changes it feels are necessary to ensure appropriate access to the State’s transmission and distribution systems. AUIA commented that R14-2-1610 (A), (D), (F), (G) and (H) require clarifying language.

Evaluation: Some clarifying language should be added to R14-2-1610.

Resolution: Insert recommended language where appropriate and necessary.

Issue: Mohave, Navopache, and Trico, with the support of Duncan and Graham, recommended the addition of language to R14-2-1610(C)(2) specifying that ISA protocols with respect to Must-Run Generating Units should be in accordance with FERC regulation of such units.

Evaluation: Because R14-2-1610(C) requires the ISA to file its protocols for FERC approval, we feel that it is unnecessary to include the suggested language in this subsection.

Resolution: No change is necessary.

Issue: Citizens recommended that a new subsections (B) and (C)(5) be added to R14-2-1610 to provide that the AISA will implement a transmission planning process to identify transmission needs within the State, and to clarify that UDCs will retain the obligation to assure adequate transmission import capability to meet the load requirements of all customers within their service areas.

Evaluation: This suggested addition to the Rules will serve the public interest.

Resolution: Add new R14-2-1610(B) and (C)(5).

Issue: ASARCO et al. recommended that language be added to R14-2-1610(H) specifying that service from Affected Utilities’ Must-Run Generating Units be provided only in

the geographical areas where Must-Run Generating Units are necessary.

Evaluation: Because the definition of “Must-Run Generation Units” in R14-2-1601(27) addresses this concern, no language change to this effect is needed.

Resolution: No change is necessary.

Issue: Citizens recommended that language be added to R14-2-1610(H) to clarify that Affected Utilities are not required to spin off their must-run units.

Evaluation: The inclusion of Utility Distribution Company in this Section, along with our clarification of the definition of Noncompetitive Services in R14-2-1601(27) accomplishes this goal, precluding the need for additional language.

Resolution: No change is necessary.

Issue: NEV proposed changes to R14-2-1610 to add energy scheduling and energy imbalances to the necessary protocols to be overseen by the Independent Scheduling Administrator.

Evaluation: This recommendation by a new market entrant is reasonable.

Resolution: Include the suggested language in R14-2-1610(C)(2).

R14-2-1611 – In-State Reciprocity

Issue: AUIA recommended that R14-2-1611(E) should be eliminated. NWE saw no need for this section. The Arizona Transmission Dependent Utility Group (“ATDUG”) also suggested modifications to R14-2-1611. ATDUG suggested adding the words “subject to the jurisdiction of the Commission” after the first “Arizona electric utilities” to clarify which utilities are subject to Commission control and to clarify that newly certified ESPs may compete in the Salt River project territory.

ATDUG recommended adding the following to the end of R14-2-1611(C): “Upon such filings, the existing service territory of such electric utility shall be deemed open to competition.”

ATDUG believed this language is necessary because otherwise a political subdivision could access the complaint procedures by filing under R14-2-1611(C) but avoid competition by failing to enter into an intergovernmental agreement under subsection D.

ATDUG recommended adding the following to the end of section R14-2-1611(D):
 “Execution of such intergovernmental agreement shall provide the electric utility authority to utilize the Commission’s Rules of Practice and Procedure and other applicable rules concerning any complaint that an Affected utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.”

Evaluation: The language of R14-2-1611 is adequate and clear.

Resolution: No change is necessary.

R14-2-1612 – Rates

Issue: NWE registered objections to the requirement to file maximum rates and also objected that this section did not establish time limitations for the Commission to approve rates.

TEP proposed deleting 1612(A) because TEP believes it may be unconstitutional for the market to determine that rates are just and reasonable instead of the Commission.

APS recommended inserting at the end of 1612(B) the following: “Such tariffs may combine one or more competitive services within the rates for any other competitive service.” APS asserted that this is consistent with Staff’s position in the PG&E Energy Services certification process.

NWE recommended deleting all of 1612(C), believing the requirement to approve customer agreements as anti-competitive and a remnant of the regulatory regime.

APS recommended deleting from the third sentence of 1612(C) and the second sentence of (D) the words “this Article and” to keep it consistent with the first sentence of (C) and to remove uncertainty surrounding the execution of an agreement.

Evaluation: We believe it to be in the public interest at this time for the Commission to establish a policy of overseeing whether contracts between Load-Serving Entities comply with approved tariffs.

In R14-2-1612(A), the Commission has utilized its ratemaking power to determine that market-determined rates for competitively provided services are to be just and reasonable, and there is no reason to delete this provision.

The new language APS suggested for R14-2-1612(B) would be inconsistent with the intent

of these Rules.

APS' recommended deletion of "this Article and" from the third sentence of 1612(C) and the second sentence of (D) would clarify this Rule. In addition, R14-2-1612(C) and (D) should be modified to indicate a meaningful and reasonable date, and references to "Affected Utility" and "Electric Service Provider" in R14-2-1612(C) and (D) should be changed to "Load Serving Entity" so as to encompass Utility Distribution Companies as well. In R14-2-1612(C) the defined term "Competitive Services" should be used.

Resolution: In R14-2-1612(C), replace "the date indicated in R14-2-1604(D)" with "January 1, 2001"; delete "this Article and", and replace "Affected Utility's or Electric Service Provider's" with "Load-Serving Entity's".

In R14-2-1612(D), replace "the date indicated in R14-2-1604(D)" with "January 1, 2001"; delete "this Article and", and replace "Affected Utility's or Electric Service Provider's" with "Load-Serving Entity's".

In R14-2-1612(E), replace "competitive services, as defined in R14-2-1605" with "Competitive Services".

R14-2-1613 – Service Quality, Consumer Protection, Safety and Billing Requirements

1613(A)

Issue: Trico proposed deleting the second sentence of section 1613(A).

Evaluation: Based on our initial review, we do not believe changes are necessary.

Resolution: No change is required.

1613(C)

Issue: RUCO wanted to delete the words "supply by" and "(or slammed)" from 1613(C). TEP proposed modifying section 1613(C) by inserting after the third sentence: "A Utility Distribution Company has the right to review or audit written authorizations to assure a customer switch was properly authorized", and substituting a semi-annual report period instead of quarterly.

Evaluation: We agree that RUCO's and TEP's proposals are reasonable. In addition, we note that in the fourth sentence the word "Providers" appears to refer to "Electric Service Providers."

Resolution: Delete the language recommended by RUCO and insert TEP's proposed sentence. Insert in the beginning of the fourth sentence "Electric Service" before "Providers".

1613(D) - Rescission

Issue: NEV proposed limiting rescission to residential customers.

Evaluation: NEV's proposal is reasonable.

Resolution: Insert "residential" before "customer" in 1613(D) and delete "with an annual load of 100,000 kWh."

1613(E) – Reliability Standard

Issue: Without proposing specific language, NWE argued section 1613(E) should be redrafted to clarify that compliance with applicable reliability standards is the responsibility of the scheduling coordinator, the ISO or the ISA, and notification of the scheduled outages is the responsibility of the UDC.

APS recommended deleting the last sentence of 1613(E) as it is covered by, and inconsistent with, section 208(D)(1).

Evaluation: We believe section 1613(E) sufficiently delineates responsibilities and disagree that this section is inconsistent with other rules.

Resolution: No change is required.

1613(G) & (H)

Issue: NWE argued subsections (G) and (H) should apply only to UDCs. Sempra recommended deleting section 1613(G) as an unnecessary cost burden.

Evaluation: We believe that subsections (G) and (H) should apply to ESPs and do not believe that subsection (G) is overly burdensome.

Resolution: No change required.

1613(I)

Issue: APS recommended conforming 1613(I) to R14-2-203(D)(4).

Evaluation: We concur with APS

Resolution: Insert "if appropriate metering equipment is in place, and the request is processed 15 calendar days prior to the next regular read date" after "billing cycle"

1613(K)

Issue: Mohave and Navopache proposed modifying section 1613(K)(1) to allow UDC's to charge a fee for providing data to the customer or ESP.

Evaluation: Based on our initial review, we are not convinced that changes are necessary.

Resolution: No change is necessary.

Issue: Tucson recommended adding the following to the end of 1613(K)(6)” “Predictable loads, such as streetlights, will be permitted to use load profiling to satisfy the requirements for hourly consumption data. The Affected Utility or Electric Service Provider will make the determination if a load is predictable.”

Evaluation: Tucson's proposal is reasonable.

Resolution: Insert Tucson's proposed language at the end of subsection (K)(6).

Issue: Tucson recommended increasing the maximum demand for eligibility for load profiling from 20kW to 50kW in 1613(K)(7). NEV suggested changing the requirement to 40 kW to ensure that small commercial users have an opportunity to participate in the competitive market.

Evaluation: Based on our initial review of the comments, we are not convinced changes are necessary.

Resolution: No change is necessary.

Issue: ASARCO et al. recommended deleting “metering or” from 1613(K)(1) because this section applies only to Meter Reading Service Providers.

Evaluation: “Metering or meter reading services” is a defined term. We do not believe a change is required.

Resolution: No change is necessary.

Issue: Trico proposed eliminating the last sentence (J). Trico also proposed deleting (K)(1), and adding to the end of (K)(2) the following: “The Utility Distribution Company shall make available to the customer or its Electric Service Provider all metering information requested at the incremental cost of providing such information.” Trico recommended deleting “reference to Electric Service Provider” in subsections (K)(8), (9) and (10) and deleting (13), (14) and (15).

Evaluation: Trico's recommendations are consistent with its view that metering, meter

reading, billing and collection have historically been considered part of distribution services and should not be made competitive. We have rejected this position, believing that for there to be meaningful competition, these contact points with customers should be competitive.

Resolution: No change is necessary.

Issue: NWE argued the provisions of section 1613(K)(4) and sections 1613(K)(10) through (15) are overly technical, and that in section 1613(K)(2), the Commission should not approve tariffs for meter testing. NWE suggested that by eliminating the reference to the allowed percentage of error, the Commission could change the standard without amending the rule.

Evaluation: We disagree that subsections (K)(4) and (10) through (15) are inappropriate for inclusion in these rules. Further, we believe tariffs for meter testing are appropriate. As for the suggestion of not delineating the allowable percentage of error, based on our initial review, we are not convinced changes are necessary. In section (K)(14) it appears that the reference to “rules” should be to the “operating procedures” referred to in section (K)(13).

Resolution: In section (K)(14) replace the word “rules” with “operating procedures”.

Issue: Citizens recommended the adding provisions to sections 1613(K)(4) and (5), that would require electronic reporting unless the Commission granted a specific waiver.

Evaluation: We concur.

Resolution: Insert at the beginning of subsections (K)(4) and (5) the following: “Unless the Commission grants a specific waiver,”.

Issue: RUCO proposed adding the following to the end of (K)(7): “however, they may choose other metering options offered by their Electric Service Provider consistent with the Commission’s rules on metering.”

Evaluation: We concur.

Resolution: Insert RUCO’s proposed language.

Issue: ASARCO proposed modifying (K)(8) to refer to metering equipment ownership rather than meter ownership and specifying the customer “must obtain the metering equipment through” the Affected Utility, ESP or UDC. Tucson recommended deleting the requirement that a meter must be obtained from an Affected Utility, UDC or ESP. Mohave and Navopache wanted to

provide that when the Affected Utility is a distribution cooperative, meter ownership must remain with the cooperative. ASARCO proposed deleting 1613(K)(10) and (11) as ASARCO et al. believed they create unnecessary confusion regarding ownership of metering instrument transformers, stating there is no legitimate reason to preclude ownership.

Evaluation: We concur with ASARCO et al. 's proposed revision of section (k)(8). We believe that it is important that meters be obtained through a regulated entity. Based on our initial review of ASARCO's comments regarding (K)(10) and (11), we are not convinced changes are necessary. Further, we are not convinced that cooperatives must retain ownership of meters.

Resolution: Insert "equipment" after "Meter" and delete "obtains the meter from" and replace with "must obtain the metering equipment through". No other changes required.

1613(L)

Issue: APS recommended deleting section 1613(L) as the group has been dissolved and the issues incorporated within the ISA Working Group.

Evaluation: APS' proposal is reasonable.

Resolution: Delete section 1613(L).

1613(N)

Issue: NWE also argued the 1613(N) should be deleted as the Electric Power Competition Act requires substantial statewide consumer outreach and education and further informational programs by ESP's are unnecessary.

Evaluation: We do not believe this provision adds an additional burden on ESPs, but merely provides for their participation in consumer education programs the Commission may require.

Resolution: No change is required.

1613(O) – Unbundled Billing Elements

Issue: NWE argued that to the extent ESPs are mandated to provide information on their billing statements, then Affected Utilities and UDCs should be mandated to provide such information in their control to the ESP.

Mohave proposed modifying 1613(O) to state that "All customer bills will list, at a minimum,

the billing cost elements shown below. In cases in which power supplies (including generation, transmission and ancillary services) are obtained on a bundled basis, those costs can be shown as a bundled cost.”

ASARCO et al. proposed the 1613(O)(1) unbundled billing elements include an additional subsection (d) for “fixed Must-Run Generation Costs.” Calpine proposed adding “ Must-Run Generation Units charge” as a new (O)(3)(e).

Trico proposed deleting (O)(3)(a) through (c)., arguing providing unbundled Standard Offer services is not necessary.

APS proposed inserting the words “for competitive electric services” after “bills” in 1613(O).

RUCO recommended deleting the word “Unbundled” at the beginning of subsection (O) and deleting (O)(2)(c) “ancillary services”. RUCO argued “ancillary services is reflected in section (O)(2).

Evaluation: That after a service territory is open to competition, all customer bills, whether Standard Offer or not, should be unbundled. We also concur that Must-Run Generation Units charge should be a billing element. Based on decision to clarify that all customer bills should be unbundled, and on our initial review of the other comments, we are not convinced additional changes are necessary. We agree that the proper title for this section should be “billing elements”.

Resolution: Revise section 1613(O) to provide: “Billing Elements. After commencement of competition within a service territory pursuant to R14-2-1602, all customer bills, including bills for Standard Offer, for customers within that service territory, will list, at a minimum the following billing cost elements:” Insert a new (O)(1)(d) as follows: “Must-Run Generation Units charge.”

1613(P)

Issue: RUCO proposed a new subsection (P) as follows: “Within a given customer class, the bundled and unbundled bills shall include the same billing cost elements.” Citizens recommended that subsection (P) require the Director of the Utilities Division to issue procedures and specifications by April 1, 1999. APS proposed inserting at the beginning of (P) the words “Information on unbundled charges will be provided to Standard Offer customers upon request.”

APS argued that most Standard Offer customers do not want or need the information and the cost

of providing it to all Standard Offer customers is high.

Evaluation: Given our modifications of section 1613(O), we believe we have addressed RUCO's concerns. We disagree that Standard Offer customers do not need or want information on unbundled rates.

Resolution: No additional changes are necessary.

R14-2-1614 – Reporting Requirements

Issue: NWE argued the entire section should be stricken as they are regulatory in nature with no pro-competitive justification. AUIA thought that subsection 1614(A)(8) should be eliminated. Sempra recommended deleting sections 1614(A)(4), (6) and (8) as they would be trade secrets under competition.

APS proposed inserting the words “and if not otherwise provided,” after applicable in section 1614(A), and proposed deleting section 1614(A)(12).

APS recommended deleting all of 1614(B)(1) and modifying (B)(2) to require only an annual report due on April 15 of each year, commencing in 2000. APS proposed inserting “at the provider’s option” in the first sentence of (C). APS also proposed deleting subsection (F) because it believed it “silly” to mandate participation in informal proceedings such as workshops.

TEP recommended the deletion of 1614(A)(3), (4) after the word “disaggregated”, and (6), (7), (8) and (9). TEP questioned the need for the amount of information currently required under the rule, and believed it would be unnecessarily expensive.

Evaluation: The reports required by 1614(A) will furnish the Commission with valuable information in assessing the competitiveness of the electricity market in Arizona and we will retain the requirement that they be filed, with the exception of 1614(A)(3), which is no longer necessary due to the deletion of the solar portfolio requirement, and 1614(A)(12), which should be deleted due to mootness.

R14-2-1614 (A)(7) would be clarified by the use of the defined terms “Competitive Services” and “Noncompetitive Services”.

APS’ proposed insertion of “at the provider’s option” in the first sentence of R14-2-1614 (C) clarifies the intent of that provision. This clarification also addresses Sempra’s concern regarding

confidentiality.

Resolution: Modify R14-2-1614 accordingly.

R14-2-1615 – Administrative Requirements

Issue: APS and NWE both proposed that R14-2-1615(A) be modified to provide that newly tariffed services shall become effective in thirty days unless suspended by the Commission as is the case at present.

Evaluation: This is a reasonable recommendation.

Resolution: Remove the second sentence of this provision.

Issue: Trico, with the support of Duncan and Graham, recommended that R14-2-1615(A) be modified to clarify that tariffs filed by ESPs are for Competitive Services.

Evaluation: This suggested modification provides clarity.

Resolution: Replace “services” with “Competitive Services” thereby incorporating the definition of “Competitive Services” in R14-2-1601 into R14-2-1615(A).

Issue: RUCO recommends adding a new subsection to R14-2-1615 requiring the Director of Utilities to implement a consumer education program as approved by the Commission. The comments of the Arizona Consumers’ Council also indicates that consumer education is a critical need and lists it as its main concern.

Evaluation: We recognize the need for an educated consumer in the successful implementation of competition.

Resolution: Add a Subsection (D) to R14-2-1615 providing for the implementation of a consumer education program.

R14-2-1616 – Separation of Monopoly and Competitive Services

Issue: Many parties proposed that the bulk of the language in R14-2-1616(B) be stricken.

Evaluation: We agree. Much of the language of condition in R14-2-1616(B) is unnecessary and does not provide the certainty to stakeholders that is vital to a rapid and orderly transition to competition.

Resolution: Modify R14-2-1616 using defined terms for clarity and consistency.

Issue: TEP suggested that separation of transmission and generation assets not be required until 2003 because TEP will be unable to accomplish the separation prior to that. TEP also recommended waiver language to address its concern that lease and bond restrictions may hamper its ability to accomplish the separation.

Evaluation: A Rule modification to this effect is unnecessary because a legal right to request a waiver already exists. In addition TEP or any other Affected Utility will have an opportunity to address these issues in the upcoming proceedings on its Stranded Cost issues.

Resolution: No change is necessary.

Issue: TEP recommended that language be added to R14-2-1616(C) to make generation cooperatives subject to the same limitations as their member distribution cooperatives. TEP stated that this is necessary in order to prevent generation cooperatives from competing in the retail electric market while utilizing the services of their member distribution cooperatives.

Evaluation: We feel that TEP has raised a valid issue here.

Resolution: Add TEP's suggested language.

Issue: Mohave and Navopache recommended that R14-2-1616 be replaced with a new R14-2-1616 entitled "Standards of Conduct."

Evaluation: Upon review of Mohave and Navopache's suggested "Standards of Conduct," we find that putting it in place of R14-2-1616 would not accomplish the goal of R14-2-1616, which provides a means of instituting true competition in the provision of retail electric services in the State of Arizona.

Resolution: No change is necessary.

Issue: Many of the parties providing comments on these Rules requested that Subsection (D) of R14-2-1616 be deleted from the Rules.

Evaluation: Deletion is necessary to conform with the deletion of the Solar Portfolio provisions of R14-2-1609.

Resolution: Delete R14-2-1616 (D).

R14-2-1617 – Affiliate Transactions

Issue: AEPCO recommended deleting all of section 1617 and substituting new language prohibiting cross-subsidization. AEPCO argued that section 1617 forces divestiture, unreasonably denies the economies and efficiencies of joint operation and unfairly punishes the Affected Utilities. AEPCO further argued the parties were not given sufficient opportunity to comment on this section which Staff first proposed in conjunction with the enactment of the emergency rules in August 1998.

APS recommended deleting “An Affected Utility of” at the beginning of R14-2-1617(A) and throughout this section because APS asserted it was redundant if the Affected Utility is also an UDC and unnecessary if it is not. APS proposed inserting “competitive electric” before “affiliates” through this section. Citizens also proposed clarifying that the use of “affiliate” means a “competitive electric affiliate.”

Evaluation: Sufficient time has passed since August 1998, for the parties to review this proposed section. We are not convinced that AEPCO’s arguments merit the proposed changes. We concur with APS’ comments regarding inserting “competitive electric” before “affiliates” and eliminating reference to Affected Utility.

Resolution: Modify Section 1617 to delete reference to an Affected Utility and to insert “competitive electric” before “affiliate”.

1617(A) Separation

Issue: TEP recommended the deletion of section 1617(A)(1) because (A)(2) contains all the necessary safeguards.

The AG proposed adding the words “fair market value” before “compensation” in R14-2-1617(A)(1).

Citizens proposed adding to the beginning of section 1617(A)(1): “Without full compensation” in accordance with subsection (A)(7) and eliminating the last sentence of (A)(1).

RUCO recommended adding the following after the first sentence of section 1617(A)(2): “however, no person privy to a utility’s non-public information shall serve as affiliate in any capacity or provide any guidance based on non-public information.”

Evaluation: We do not believe that all of the protections contained in (A)(1) are included

in (A)(2). We concur with Citizens' suggested revision and believe that the AG's concerns are adequately addressed in the rule. Based on our initial review of RUCO's comments, we are not convinced a change is merited.

Resolution: Modify section 1617(A)(1) as proposed by Citizens.

Issue: RUCO recommended changing the reference in section 1617(A)(4) from "customer written communication" to "written communication to customers".

Citizens recommended adding language to the beginning of section 1617(A)(4) and end of section 1617(A)(5) qualifying these sections with "Unless such activities are governed by a contract resulting from an open bidding process. Citizens proposed deleting the second sentence from section (A)(6) concerning the application of the rules to Board of Directors.

TEP recommended that the following be added after the first sentence of section 1617(A)(6): "Because Directors and Officers of a holding company are charged with the success of all of the holding company's subsidiaries, they may also serve as Directors or Officers of all affiliated subsidiaries, provided that adequate procedures are in effect to prevent the transfer of information in violation of these Rules." TEP recommended the deletion of the currently existing second sentence.

NEV recommended modifying section 1617(A)(6) by changing the second sentence to provide that this rule does not apply to Board of Directors and corporate officers, and by eliminating everything after the second sentence.

APS proposed inserting "to existing or potential retail customers" in R14-2- 1617(A)(3). In R14-2-1617(A)(5), APS proposed inserting "with retail customers" after "sales". In R14-2-1617(A)(6), APS recommended changing the second sentence to provide that this rule "does not apply" to Boards of Directors and corporate officers. APS recommended deleting the third sentence. APS also proposed inserting "service company" in the fourth sentence.

Evaluation: We concur with RUCO's proposed clarifying language. Further, we believe that section (A)(6) should apply to Boards of Directors. Based on our initial review of the comments above, we are not convinced additional changes are necessary.

Resolution: Replace “customer written communication” with “written communication with customers”. No additional changes are required.

Issue: TEP proposed replacing “higher of fully allocated cost of the” in section 1617(A)(7) with “no lower than the”.

APS suggested section 1617(A)(7)(a) be modified to read “Goods and services provided by an Utility Distribution Company to a competitive electric affiliate shall be transferred at the price and under the terms and conditions specified in its tariff. If the goods or service to be transferred is a non-tariffed item, and is regularly sold by the Utility Distribution Company to third parties, the transfer price shall be the market price. If market price can not be easily determined by the Utility Distribution Company or if a good or service is not regularly offered to third parties (e.g. shared service), the transfer price should not be less than the fully allocated cost of the good or service.”

APS argued that its proposed language was clearer and that there is no reason to restrict pricing on goods and services from a competitive entity to an UDC.

APS proposed deleting section 1617(A)(7)(b) because it believes cross subsidization is covered in section 1617(A)(8). In section 1617(A)(8), APS recommended deleting the words “and shall not be provided access to confidential utility information” as this is covered in section 1617(B).

RUCO proposed adding language to section 1617(A)(7)(a) at the end of the second and third sentences to this effect: “except that if a good or service transferred is being divested because it is used to provide a competitive service under this Article, it may be transferred at a Commission-approved market value even if its fully-allocated cost is higher.”

Evaluation: Based on our initial review of TEP’s proposal, we are not convinced changes are necessary. We concur with APS’ proposal regarding section 1617(A)(7)(a), but are not convinced that the protections of subsection (A)(7)(b) are fully covered in subsection (A)(8). We are not convinced the RUCO’s proposed language is necessary.

Resolution: Replace section 1617(A)(7)(a) with the language proposed by APS.

1617(B) Access to Information

Issue: The AG recommended adding “and to other Energy Service Providers,” after “nonaffiliates” in section-1617 (B). RUCO proposed deleting the words “As a general rule, an” from

the beginning of section-1617 (B).

Evaluation: We concur with the AG and RUCO.

Resolution: Delete “As a general rule,” and delete “nonaffiliates” and replace with “nonaffiliated Electric Service Providers” in section 1617(B).

1617(C)

Issue: APS proposed deleting section 1617(C)(2) as unnecessary. APS suggested adding a sentence to the end of (C)(3) as follows: “This provision does not prevent a UDC’s employees from giving customers objective, factual, and publicly available information concerning Energy Service Providers.”

Citizens proposed adding to section 1617(C)(3) after “rules” and “unless such activities are services governed by a contract resulting from an open competition bidding process,” to allow the affiliate to bid in a fair, open process against other competitors.

Evaluation: We are not convinced that section 1617(C)(2) is unnecessary, but concur with APS’ proposed addition to section 1617(C)(3). Based on our initial review of Citizen’s comments, we are not convinced that additional changes are necessary.

Resolution: Add language to section 1617(C)(2) as suggested by APS.

1617(D)

Issue: APS proposed inserting “for non-competitive service in section 1617(D)(1) and (4) on the theory that if one unregulated entity wants to give preference to another unregulated affiliate, there is no harm. APS also recommended deleting the second sentence of section 1617(D) as it is covered elsewhere.

Evaluation: Based on our initial review, we concur with APS concerning deleting the second sentence of section 1617(D), but are not convinced the proposed changes to sections (D)(1) or (4) are required.

1617(E)

Issue: Citizens proposed adding to the end of section 1617(E): “The Director, Utilities Division shall issue no later than December 31, 1999, detailed requirements which describe the scope of these audits and the degree of responsibility to be taken by the auditor.”

TEP proposed changing December 31, 1998 in section 1617(E) to September 30, 1999, and requiring semi-annual audit reports rather than quarterly reports.

Sempra recommended that section 1617(E) be modified to require filing a compliance plan thirty days prior to the implementation of competition.

APS proposed language in section 1617(E) that would make requiring an UDC to hire an independent auditor discretionary for cause. APS also proposed changing “performance audit” to “compliance audit” to be consistent.

Evaluation: We agree the date December 31, 1998 should be changed to September 30, 1999, and that the term “performance audit” should be “compliance audit”. We believe that compliance reports should be due starting at the end of the calendar year in which competition is implemented pursuant to section 1602. We are not convinced that additional changes are required.

Resolution: Revise the dates in section 1617(E) as discussed again and replace “performance” with “compliance”. No further changes.

1617(F)

Issue: The AG recommended adding the following after “interest” in 1617(F)(2): “only after notice and an opportunity to be heard is given to all parties to the Commission’s Electric Energy Restructuring consolidated docket, and to the public, and only at an open meeting called for that purpose.”

Calpine proposed a new subsection (F)(2) as follows: “the petitioner shall notify the Electric Service Providers and provide public notice of the petition as required by the Commission.”

Evaluation: We believe the AG’s and Calpine’s concerns can be addressed by inserting the words “, after public notice” after “The Commission” in section 1617(F)(2).

Resolution: Modify section 1617(F)(2) accordingly.

R14-2-1618 – Disclosure of Information

Issue: AEPCO with the support of Trico, Duncan and Graham recommended deleting R14-2-1618 because the tracking mechanism necessary to assure accurate information disclosure does not currently exist. NWE argued it should be stricken in its entirety as it is burdensome, onerous,

misleading and unlikely to assist customers in making a reasoned choice of suppliers. TEP also recommended deleting R14-2-1618 in its entirety because the costs outweigh its benefits.

Trico proposed two new provisions to replace sections R14-2-1616, 1617 and 1618:

“R14-2-1615 Cross Subsidization Prohibited

Competitive Services offered by an Affected Utility, Utility Distribution Company or their affiliates, if any, shall not be subsidized by any rate or charge for any Noncompetitive Service.” and

“R14-2-1616 Code of Conduct

The Commission shall establish a Code of Conduct that shall be applicable to each Affected Utility, Utility Distribution Company or their affiliates, if any, who conduct more than one of Generation, Transmission or Distribution Services to prevent subsidization and improper communications between the two or three functions.”

RUCO and APS recommended deleting R14-2-1618(A). RUCO proposed replacing “Load Serving Entity” in R14-2-1618(B) with “provider of services described in Rule R14-2-1605.A”. RUCO wanted to clarify that all providers of competitive generation are required to disclose the information but that Standard Offer Service providers are not. RUCO also recommended deleting R14-2-1618(B)(4), (5) and (6). APS recommended deleting R14-2-1618(G)(2), asserting it made it too hard to change ESPs. ASARCO et al. proposed deleting R14-2-1618(B), (C), (D) in their entirety and the words “consumer information label” from R14-2-1618(G), believing the product labeling requirements to be onerous. AUIA recommended eliminating R14-2-1618 (A), (B), (C), (D), (E), (G) and (H).

APS recommended replacing “Load Serving Entity” in R14-2-1618 with ESP providing generation services and inserting in R14-2-1618(B) “(to the extent reasonably available or known) for residential” and deleting “with a demand of less than 1 MW”. APS proposed deleting R14-2-1618(F)(11) and (12) .

NEV proposed modifying R14-2-1618(D) to require the disclosure label in all “brochures and other collateral” marketing materials targeted to residential customers. NEV did not think business customers would require or benefit from the proposed consumer protection measures.

NEV proposed deleting 1618(F)(12). ACAA recommended modifying R14-2-1618(F) to

refer to low income programs and rate eligibility to recognize there are more than just rate programs for low-income consumers. ACAA also proposed requiring the Commission to establish a consumer information advisory panel to assist the Commission in developing a consumer education program.

The AG proposed adding at the end of R14-2-1618(I): “ a representative of the Attorney General’s Office shall be named to the panel.”

Evaluation: We believe that the proposed section provides valuable protections for consumers. We believe that it should be modified to be less onerous on ESPs. In general, we believe APS’ proposed changes are reasonable and will adopt them.

Resolution: Delete R14-2-1618(A) and substitute “Electric Service Provider” for “Load-Serving Entity”. Insert “(to the extent reasonably known)” after “information” and “residential” in front of “customers in R14-2-1618(B), and delete “with a demand of less than 1MW.” Correct the grammar in R14-2-1618(D) and insert “programs and” after “income” in R14-2-1618(F)(10).

R14-2-201 – Definitions

Issue: To clarify terms that are defined in Article 16, but used in Article 2, ASARCO, et al. proposed adding after the first sentence of section 201 “In addition, the definitions contained in Article 16, Retail Electric Competition shall apply in this Article unless the context otherwise requires.”

Evaluation: We concur with ASARCO.

Resolution: Insert the language above.

R14-2-202 – Certificate of Convenience and Necessity

Issue: Sempra proposed that 202 (A)(1)(b) be revised to refer to “maximum rates.”

Evaluation: We concur with Sempra that the proposed language is consistent with section 1603.

Resolution: Insert “maximum” before “rates”

R14-2-203(B)

Issue: Citizens recommended adding a subsection (9) as follows: “If a Utility Distribution Company’s customer with an established deposit elects to take competitive services from an Electric Service Provider, and is not currently delinquent in payments to the Utility Distribution Company, the Utility Distribution company will refund a portion of the customer’s deposit in proportion to the expected decrease in monthly billing., A customer returning to Standard Offer Service may be required to increase an established deposit in proportion to the expected increase in monthly billing.

APS proposed replacing “shall” with “may” in section 203(B)(2), as APS does not issue a receipt when deposits are made over the phone or as a credit card transaction.

ACAA recommended including a consumer group in the process of developing a label format and reporting requirements.

Evaluation: We concur with Citizens and APS. We believe that ACAA’s concerns are already addressed in R14-2-1618.

Resolution: Modify 203 (B) and (3) as discussed above. No further changes required.

R14-2-204 – Minimum customer information requirements

Issue: Sempra proposed that 60 days be changed to 15 days because 60 days is not responsive to customer needs.

Evaluation: We concur.

Resolution: Replace “60” with “15”.

R14-2-209 – Meter Reading

Issue: ASARCO et al proposed changing the acceptable error allowance for meters from 3% to 1%.

APS recommended inserting “kW only” before meters in section 209(A)(1), as APS noted there is no way for a customer to reset a demand or read numerous dials such as time-of use meters.

Sempra recommended adding “Meter Reading Service Provider” to 209(D).

Trico recommended deleting 209(A)(6) and (8) and (F) to prevent metering, meter reading , billing and collection from being competitive because historically they are part of distribution services. Trico also recommended deleting reference to ESPs in 209(C) and 210(B) and (E).

Evaluation: Based on our initial review of the comments of ASARCO et al., we are not convinced that changes are necessary. We do agree with Trico’s position that metering services should not be competitive. Otherwise, we believe this section is sufficiently clear without further modifications.

Resolution: No change required.

R14-2-210 Billing and Collection

Issue: APS proposed replacing “authorization” with “notification” in 210(A)(1), as APS agreed that a customer should be notified, but that it was impractical to obtain written authorization.

APS recommended a new section 210(A)(3)(f) as follows: “When the Company gives customers prior notification that actual reads for kWh meters will be made on a less frequent basis. APS argued this would produce cost reduction measures in situations where monthly readings are not cost-effective. APS recommended deleting 210(A)(5)(b).

Trico proposed inserting “unbundled” before “rates” and adding “except for Standard Offer

services” in 210(B)(2)(k). Trico recommended the deletion of 210(E)(3) because it places a time limitation on the commencement of a civil action to enforce a constitutional right.

TEP recommended deleting section 210(A)(5)(c) such bills can be estimated in accordance with section 209(A)(8) and section 1613(K)(14).

TEP recommended inserting “(if measured)” after “demand” in section 210(B)(2)(c) as TEP does not measure demand for residential customers.

TEP proposed deleting “residential” from 210(G)(1) to allow levelized billing plans to customers other than residential.

NWE believed the provisions of section 210 are overly technical and should not be included in the rules, but despite that, also argued that this section does not clarify who has the right to bill a customer.

RUCO proposed that (C)(1) be modified to provide that bills be due no sooner than 15 days after rendered.

RUCO argued that the first sentence of (E)(1) is duplicative of language included at section 209(F).

Evaluation: We concur with RUCO’s recommendation to delete the first portion of (E)(1) and with TEP’s proposal regarding (B)(2)(c) and (G)(1). We believe APS’ proposals do not afford the consumer adequate protections and we do not accept NWE’s and Trico’s arguments. Based on our initial review of any other comments, we are not convinced additional changes are necessary.

Resolution: Delete first two sentences of section 210(E)(1), Insert “(if measured)” after “demand” in (B)(2)(c) and delete “residential” in (G)(1).

R14-2-211 – Termination of service

Issue: APS recommended replacing “reasonable” with “mutually agreed” in section 211(A)(d), to avoid the ambiguity of the word “reasonable”.

Sempra recommended changing sections 211(B)(1) and (C)(1) to permit an ESP to order a disconnect for non-payment to prevent customers hopping from ESP to ESP to avoid payment. Sempra also recommended adding “and/or ESP” through this provision.

Evaluation: We concur with APS. We do not believe that ESP should be allowed to order

disconnection.

Resolution: Substitute “mutually agreed” for “reasonable” in section 211(A)(1)(d). No other change required.

R14-2-213 Conservation

Issue: TEP recommended deleting section 213 because TEP argued it is premature to enact this provision until it can be made statewide in conjunction with the legislature. and because the Commission will be revisiting the Integrated Resource Planning rules in light of the move to competition.

Evaluation: Based on our initial review, we are not convinced that changes are necessary.

Resolution: No change required.